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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 19, 2002

AT THE RELATION OF THE

STATE CORPORATION COMMISSION

CASE NO. PUE-2001-00298

Ex Parte: In the matter of
establishing rules and regulations
pursuant to the Virginia Electric Utility
Restructuring Act for competitive
metering services

ORDER ADOPTING RULES

Pursuant to the provisions of the Virginia Electric Utility Restructuring Act, § 56-576 et seq. ("Act") of the Code of Virginia, specifically, § 56-581.1, and the Commission's December 21, 2001, Order issued in this docket, the Staff filed a report on February 14, 2002 ("Report"), with the State Corporation Commission ("Commission") presenting proposed rules for competitive electric metering services. On February 19, 2002, the Commission issued an Order Inviting Comments ("Order") providing interested parties an opportunity to comment and/or request a hearing on Staff's proposed competitive metering rules. Pursuant to the Order, we received comments on the proposed competitive metering rules from the following eight parties: the AG, AEP-VA, AP, Virginia Power, NewEnergy, AEI, and, together, BA/EC.¹ No party requested a hearing on the proposed rules.

The majority of the parties' comments generally supported Staff's proposed rules. Many of the parties' comments expressed their agreement with Staff that the proposed rules address the

¹ The Division of Consumer Counsel, of the Office of the Attorney General ("AG"), Appalachian Power Company d/b/a American Electric Power-Virginia ("AEP-VA"), Allegheny Power Company ("AP"), Virginia Electric and Power Company ("Virginia Power"), AES NewEnergy, Inc. ("NewEnergy"), American Energy Institute ("AEI"), and, together, Brayden Automation, Inc. and Energy Consultants, Inc. ("BA/EC").

most critical element of electricity metering – accessibility to data. Pursuant to the provisions of Va. Code § 56-581.1 and the Commission's December 21, 2001, Order, the Commission is to implement the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on January 1, 2003.²

The market for competitive metering services continues to be in the early stages of development. Staff and the parties who filed comments in this proceeding, some of whom are electricity marketers ready to participate in the market for competitive generation, have impressed upon us that customers' accessibility to usage data is a critical element to the development of a well-functioning competitive generation market. We believe that Staff's proposed rules, as amended herein, take a thoughtful and deliberate approach that is consistent with the Act and appropriate at this stage of development of the market for these competitive services.

The proposed competitive metering rules seek to ensure electric customers access to their meter data. Meter data are important tools in customers' decisions to enter – and marketers' efforts to entice them into – the market for electric generation. We agree with those parties and Staff who assert that access to timely meter data may boost the development of the competitive generation market because such information can assist in providing improved price signals and competitive energy management services to customers.

Virginia Power expressed concern in its comments that Staff's proposal for implementing competitive metering for large industrial and large commercial customers is inconsistent with the enabling statute for competitive metering, Va. Code § 56-581.1 E. Virginia Power argues that the plain language of the statute indicates that the implementation of the provision of competitive

² Also, in our December 21, 2001, Order, we found it premature to rule on requests to delay implementation for residential and small business customers.

metering services must include the provision of such services by "licensed providers" and that the term "competitive metering services by licensed providers" implies something more than the provision of interval meters and metering data by a single market participant, the local distribution company ("LDC"). The Staff has taken the position that its proposed rules, which provide for customer access to data through the LDC are consistent with Va. Code § 56-581.1.

Virginia Code § 56-581.1 E provides:

The Commission shall implement the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on January 1, 2002, and may approve such services for residential and small business customers of investor-owned distributors on or after January 1, 2003, as determined to be in the public interest by the Commission.³ (Emphasis added.)

This section goes on to state that:

Such implementation and approvals shall:

1. Be consistent with the goal of facilitating and development of effective competition in electric service for all customer classes;
 2. Take into account the readiness of customers and suppliers to buy and sell such services;
 3. Take into account the technological feasibility of furnishing any such services on a competitive basis;
 4. Take into account whether reasonable steps have been or will be taken to educate and prepare customers for the implementation of competition for any such services;
 5. Not jeopardize the safety, reliability or quality of electric service;
 6. Consider the degree of control exerted over utility operations by utility customers;
 7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide electric service to customers who do not buy such services from competitors to provide electric service to such customers at reasonable rates;
 8. Give due consideration to the potential effects of such determinations on utility tax collection by state and local governments in the Commonwealth;
- and

³ As discussed above, and as provided for in Va. Code § 56-581.1, in its December 21, 2001, Order, the Commission delayed the implementation of competitive metering services for one year.

9. Ensure the technical and administrative readiness of a distributor to coordinate and facilitate the provision of competitive metering services for its customers. (Emphasis added.)

We believe that the language in the statute is clear that the nine criteria apply to both the implementation for large industrial and commercial customers, and the approval for residential and small business customers. The language in Va. Code § 56-581.1 E states specifically that the nine criteria are to apply to "[s]uch implementation and approvals" listed in the statute. Virginia Code § 56-581.1 E mandates implementation of competitive metering services for large industrial and commercial customers and allows the Commission to approve these services for residential and small business customers. In addition, Staff's proposed rules oblige both the LDCs and competitive suppliers to provide customers access to interval meter data, and therefore, begin the implementation of competitive metering. Thus, we find that the proposed rules are consistent with the Act, including Va. Code § 56-581.1.

In its comments, AEP-VA requests that the Commission extend approval of its tariff provisions permitting the Company to offer fully unbundled competitive metering services that will expire at the end of 2002. The Company requests the Commission extend approval of the tariff provisions until full implementation of competitive metering services is achieved. We granted approval of AEP-VA's tariff for the calendar year 2002 in anticipation that final rules for full, unbundled competitive metering services would be approved and in place by January 1, 2003. The rules we adopt herein do not address fully unbundled competitive metering services. As we directed in previous orders issued in this docket, the Staff, with the assistance of the competitive metering work group, continues to meet to examine further additional elements of competitive metering services and is to submit a report addressing these issues on or before August 30, 2002. Based on the current and foreseeable environment of competition in metering

services, we cannot predict with certainty when final rules addressing fully unbundled competitive metering services will be in place. We will grant AEP-VA's request and extend the approval of AEP-VA's competitive metering tariff until such time the Commission adopts rules providing for full implementation of competitive metering services or until the Commission determines otherwise.

The majority of the comments generally supported Staff's recommendation for a measured approach and a gradual movement toward implementing full competitive metering services. We agree that, at this time, a thoughtful and deliberate approach to implementing these services is appropriate. Consistent with the Act, we agree with Staff that the proposed rules implement competitive metering services on January 1, 2003, by providing for meter functionality choices and data access choices, including access to meter data on a near real-time, on-command basis.

The market for competitive metering services is expected to develop gradually. The proposed rules provide customers initial options for accessing their meter data. We believe the proposed rules take appropriate steps that will advance the efforts toward the implementation of unbundled competitive metering services. We have directed the competitive metering work group to continue to meet to address additional implementation efforts, and the Staff to file a report, now due August 30, 2002, relative to those issues.⁴ We request that the work group continue to meet to determine a schedule for implementation of additional elements of competitive metering services.

⁴ In our December 21, 2001, Order, we directed the Staff to file a report addressing additional implementation efforts on or before June 30, 2002. On June 17, 2002, the Staff filed a motion requesting to extend the time for filing its report from June 30, 2002, until August 30, 2002. On June 19, 2002, we issued an order granting the Staff's Motion.

In its comments, the AG continues to support implementing fully unbundled competition in these services as soon as practicable. NewEnergy supports competitive metering options being made available to consumers. Virginia Power proposes in its comments a target date of January 1, 2004, for the competitive provision of all metering services to large commercial and industrial customers. The competitive metering statute provides for an earlier implementation of these services for large customers than for small customers. Many large customers already have interval meters, and it is these customers that will most likely realize any potential benefits from initial implementation efforts. We also believe that implementation efforts may be advanced if, in addition to having access to interval meter data, customers are given additional meter functionality options. Accordingly, we direct the work group to examine the issue of implementing meter ownership for large customers, as soon as practicable.

With regard to residential and small business customers, in its comments, AEI asked Staff to make a recommendation, and the Commission to consider any Staff recommendation, regarding the desirability of competitive metering for residential and small business customers. AEI believes that competitive metering for residential and small business customers is not economically viable and would thwart the provision of advanced meters to those customers.

The Act provides that the Commission may approve competitive metering services for residential and small business customers, as determined to be in the public interest. In our adoption of the proposed rules, these customers will get the advantages that result from access to interval meter information. What is not clear at this time, however, is whether implementing competition in metering services now will bring additional benefits to residential and small business customers. The work group has examined and continues to study this issue. We believe that full competitive metering services should be offered to residential and small business

customers if it appears that implementation, carefully considering the nine criteria as required by 56-581.1, is in the public interest. We ask the work group to continue to examine whether the implementation of full competitive metering services for residential and small business customers would be in the public interest, and ask the members of the work group to respond to this key issue.

In its comments, BA/EC, a manufacturer of energy management equipment, discusses the issue of implementation of competitive metering in the context that any initiative should empower customers to gain more control over their electricity costs. This is accomplished, BA/EC asserts, through the combination of real-time access to electricity usage information and real-time rate structures that allow customers to impact their electricity costs. BA/EC proposes that the LDC should be required to offer a rate with a demand reduction incentive, and that rate should be compatible with the competitive suppliers' offer of real-time price signaling.

In addressing BA/EC's stated concerns, we believe that Staff's proposed rules take initial steps for customers to gain more control over their electricity costs by providing customers options to access meter data. We understand, however, that economic barriers may exist to residential and small business customers purchasing interval data meters; in contrast, many large customers already use interval data meters. We agree that customers cannot take advantage of competitive offers utilizing time-of-use rates without access to real-time usage information. Some utilities' tariffs on file with the Commission include time of use rate schedules available to both large and small customers. Thus, we believe that the work group should study the possibility of the utilities establishing voluntary and/or expanding time-of-use rate programs for residential and small business customers. We have not seen yet in Virginia, a list of suppliers offering competitive generation services to residential and small business customers. We believe

that providing customers access to time-of-use rates may be an effective way to promote retail competition.

Rules Adopted

After consideration of the parties' comments and the Staff Report, we adopt Staff's proposed rules as amended herein. Most of the parties who filed comments had few if any substantial objections to Staff's proposed rules. We will not discuss in detail every change made, but we discuss below certain key provisions identified in the various comments.

Several parties stated that the language in proposed Rule 20 VAC 5-312-120 B needed to be clarified. AP wanted the language clarified to reflect that all applicable up-front costs should be paid by the customer prior to the LDC completing the work. NewEnergy sought clarification that the term "net incremental cost" should include cost savings associated with any avoided costs that the advanced meter may provide, such as avoided manual meter read costs, avoided operational costs or avoided costs as a result of enhanced meter reliability. AEP-VA supported the rule as an interim solution and believes it should be removed as soon as an orderly transition to competition in metering services will allow because the rule adopts a cost methodology that provides too little cost recovery for the charges for LDC interval metering.

The Commission notes the concerns expressed by AP, NewEnergy and AEP-VA relative to net incremental costs, but we find that no change is necessary to the rule. We believe the language in the rule as written is adequate to address parties' concerns. The rule requires customers to pay the net incremental cost above the basic metering service provided by the LDC. We suggest that AP may propose in its tariff compliance filing to include a prerequisite for customers to pay certain costs up front in its statement of prerequisites for completing the work.

In addition, NewEnergy requests that the Commission reexamine and reduce the 45-day time period for the utility to complete the customer request. AEP-VA requests that the rule be clarified to reflect that the 45-day period begins once the customer has met all of the prerequisites. Virginia Power, similarly, wants that calculation of the 45-day period to start after the customer completes the required prerequisites. The Staff stated in its Report that it anticipated that the work in many cases will be completed much sooner but may take longer than 45 days in unusual cases.

The Commission agrees with AEP-VA and Virginia Power with respect to establishing completion of the prerequisites as a necessary condition to the beginning of the 45-day period. We have added language to the rule to reflect that condition. We also agree with NewEnergy's position that the utilities should not consider the 45-day limit the acceptable norm. The utilities shall endeavor to complete installation of the meters as soon as feasible, with the goal of completing the request well in advance of the maximum time allowed of 45 calendar days.

With regard to 20 VAC 5-312-120 C, AP would like clarification that there will be customer costs associated with all three options provided for in the rule. AEP-VA similarly recommends that language be added to the rule reflecting that the customer shall pay the cost of providing such options. In its Report, the Staff stated its position that to the extent that any of the required options cost more than the basic metering service provided by the LDC, the customer would be expected to pay the net incremental cost of providing the service.

We believe that the requirements in rule C are considered part of "interval metering service," and, therefore, subject to the net incremental costs provisions of Rule B. Thus, we do not believe additional language relative to cost assignment is necessary. In addition, AEP-VA believes the rule should be clarified to state that the LDC is required to provide only LDC-

approved equipment that is consistent with its communication protocol. We agree with this recommendation, and have amended the rule to reflect that change. AEP-VA also recommended that the last sentence of the rule listing the interval metering service options the LDC must make available be amended to replace the word "and" with "or." We disagree. The word "and" is appropriate because the clear intent of rule is to require the LDC to make available to customers all three interval data options.

Finally, several of the utilities requested that clarifying language be added to rule 5 VAC 5-312-20 E addressing LDC processing of customer requests for special meter functionality. Virginia Power requested that the rule be modified to give the LDC five days to acknowledge the request and 30 days to identify the cost, prerequisites and process for completing the work, and that the 45 day clock would not begin until the customer has satisfied all prerequisites. AP indicated that the five business day period may not be sufficient time for the LDC to identify all of the necessary costs. AP also requested the rule be clarified to reflect that the work shall be completed within 45 days after all applicable costs have been paid. AEP-VA suggested language that would specify the work to be performed, and that the LDC will be permitted to recover its costs.

We will amend rule E to reflect the various recommendations providing the LDCs additional time to determine costs and completion of the work after the customer has completed all applicable prerequisites. We find additional language is not needed relative to the customer cost issue; the rule indicates that there are costs associated with the special meter functionality implying that the customer shall pay those costs.

Accordingly, IT IS ORDERED THAT:

(1) Regulations for competitive metering services are hereby adopted as set forth in Attachment A to this Order.

(2) On or before September 30, 2002, each incumbent electric utility in Virginia shall file tariffs for competitive metering services reflecting the adopted regulations.

(3) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations. The rules shall be effective as of January 1, 2003.

(4) The Commission Staff shall proceed with the assistance of the work group to address those issues identified in this Order, issues we have identified in previous orders, as well as issues that arise during the efforts of the work group.

(5) Approval of AEP-VA's tariffs for competitive metering services is extended until such time the Commission adopts rules for full implementation of competitive metering services or until the Commission determines otherwise.

(6) This matter shall be continued for further proceedings consistent with this Order.

CHAPTER 312.

RULES GOVERNING RETAIL ACCESS TO COMPETITIVE ENERGY SERVICES.

20 VAC 5-312-100. Load profiling.

A. The local distribution company shall conduct its load profiling activities in a nondiscriminatory and reasonably transparent manner.

B. The local distribution company shall ensure that profile classes are easily identifiable, that load profiles used are representative of the customer class being profiled, and that customer loads are represented in a nondiscriminatory manner. Load profiles and load profiling methodologies shall be reviewable and verifiable by the State Corporation Commission.

C. The local distribution company shall provide a competitive service provider, through the appropriate regulatory process, access to sample data, excluding any customer-specific identifier, that is necessary to verify the validity and reliability of load profiles and methodologies.

D. The local distribution company shall use a load profiling method that balances ease of implementation with the need for the load profile to reasonably represent and predict the customer's actual use. The method used shall balance the need for accuracy, cost-effectiveness for the market, predictability, technical innovation, lead time to implement, demonstrated need for market data, and sample bias. The validity of the approach needs to be reconfirmed periodically or as markets evolve, and corresponding load profiles shall be updated accordingly and made available to competitive service providers.

E. The local distribution company shall make available to a competitive service provider the validated and edited customer class or segment load profile via a website in a read-only, downloadable format or by other appropriate cost-effective electronic media. The information shall be date stamped with the date posted and the date created, and the website or other electronic media shall clearly indicate when updated information has become available.

F. A customer's assigned load profile shall remain the same regardless of the provider of electricity supply service. Customer loads that are not metered, such as streetlights, may be represented by load profiles deemed to closely reflect their known patterns of usage.

G. The load sample may include both customers served by the local distribution company, or the default service provider as determined by the State Corporation Commission pursuant to §56-585 of the Code of Virginia, and customers served by a competitive service provider, such that a customer is not automatically removed from the load sample when the customer begins to receive service from a competitive service provider.

~~H. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. If the local distribution company provides interval metering as the basic metering service in accordance with its applicable tariff, interval metering of a customer's load shall continue to be required if such customer purchases electricity supply service from a competitive service provider.~~

I. H. The local distribution company shall post its distribution and transmission loss factors via the appropriate electronic methodology.

20 VAC 5-312-120. Electricity metering.

A. If the local distribution company provides interval metering as ~~the~~ a customer's] basic metering service in accordance with its applicable tariff, interval metering of [a that] customer's load shall continue to be required if the customer purchases electricity supply service from a competitive service provider. Unless other arrangements are agreed upon between the local distribution company and the customer, the local distribution company may remove the interval meter if the customer's load deteriorates below previously established interval metering thresholds.

B. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. The local distribution company shall reply to the customer in writing within five business days of the request for interval metering service, acknowledging [receipt of] the request ~~[and identifying the prerequisites and proposed , explaining the] process [for , and identifying the prerequisites for commencing and] completing the work. [The Once the customer has completed the applicable prerequisites, the] local distribution company shall complete the work within 45 calendar days, or as promptly as working conditions permit.~~

C. The local distribution company shall offer each of the following [interval metering service] options to customers or their authorized competitive service provider to access unedited interval data [from the local distribution company's interval metering equipment and] consistent with the local distribution company's communication protocol: (i) read-only electronic access to

the interval billing meter, (ii) receipt of a stream of data pulses proportional to energy usage, and (iii) both of the foregoing.

D. ~~The~~ As a component of interval metering service, the] local distribution company shall read interval meters at a frequency in accordance with its applicable terms and conditions and shall store interval meter data at intervals compatible with wholesale load settlement requirements. Interval meter data may be estimated on occasion as necessary. The local distribution company shall make available to customers or their authorized competitive service provider 12 months of historical edited interval data through electronic communication medium ~~[or unless otherwise requested by]~~ mail, as mutually agreed.

E. The local distribution company shall ~~consider reasonable~~ respond to] requests from customers or their authorized competitive service provider to evaluate special metering functionality ~~and~~ that may not be provided normally under the local distribution company's tariff but that is determined by the local distribution company to be within the capability of its interval metering equipment. The local distribution company] shall ~~reply to~~ acknowledge receipt of] the requests in writing within five business days, ~~[acknowledging the request and identifying indicating that]~~ the [net incremental] cost [, prerequisites] and process for ~~[completing the work providing the special metering functionality will be submitted in writing within 30 days].~~ ~~The~~ Once the customer has completed the applicable prerequisites, the] local distribution company shall ~~[complete the work]~~ provide the special metering functionality] within 45 calendar days, or as promptly as working conditions permit.